

**ADVERTISING AGREEMENT BETWEEN
SANTA FE COUNTY AND KOB-TV, LLC**

THIS AGREEMENT is made and entered into on this 12 day of April, 2011, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), an New Mexico political subdivision, and **KOB-TV LLC**, a Delaware Foreign Limited Liability Company authorized to do business in New Mexico (hereinafter referred to as the "Contractor").

WHEREAS, the Santa Fe County Fire Department is a combination fire department that integrates both paid staff and the service of dedicated volunteers;

WHEREAS, the Department protects approximately 1,900 square miles of unincorporated area as well as the incorporated Town of Edgewood and provides protection to approximately 76,000 residents living in 27,500 occupied housing units, as well as several million square feet of commercial development;

WHEREAS, the County wishes to recruit individuals interested in serving as Volunteer Firefighters; and

WHEREAS, the County desires to engage KOB-TV, LLC to provide an advertisement campaign during a six (6) month period to assist with recruiting individuals to serve as Volunteer Firefighters for the Santa Fe County Fire Department.

NOW THEREFORE, it is agreed between the parties:

1. Scope of Work.

A. The Contractor shall run video ads owned by Santa Fe County twice weekly on KOB-TV and display 100,000 web impressions per month on KOB website for a period of six (6) months.

B. Video services will be performed during the following time periods:

- Monday through Friday – 6:00 am to 7:00 am: Contractor shall run one (1) thirty (30) second advertisement every other week (Alternating weeks).
- Monday through Friday – 5:00 pm to 7:00 pm: Contractor shall run one (1) thirty (30) second advertisement every other week (Alternating weeks).

C. Web Campaign Schedule:

- Web exposure: Six (6) month Campaign Flight
- Banner Size: 300-250 Med Rectangle
- Guaranteed Impressions per month: 100,000

2. Compensation.

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

The County shall pay to the Contractor three-thousand dollars (\$3,300) for running twelve (12) morning videos, three-thousand dollars (\$3,000) for running twelve (12) evening videos,

and three-hundred and fifty dollars (\$350) per month for six (6) months to display 100,000 web impressions per month such compensation not to exceed eight-thousand four-hundred dollars (\$8,400), excluding gross receipts tax. **The total amount payable to the Contractor under this Agreement, excluding gross receipts tax and expenses, shall not exceed eight-thousand nine-hundred dollars and eighty eight dollars (\$8,988).**

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.

The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

3. **Effective Date and Term:** This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate six (6) months later, unless earlier terminated pursuant to Section 4 or 5, "Termination" or "Appropriations" of this Agreement.

4. **Termination.**

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of

termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

5. **Appropriations.** This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

6. **Status of Contractor.** The Contractor and its agents and employees are independent contractors performing professional services for the County and are not employees of Santa Fe County. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of county vehicles, or any other benefits afforded to employees of Santa Fe County as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind Santa Fe County unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. **Assignment.** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County.

8. **Subcontracting.** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the County.

9. **Release.** Final payment of the amounts due under this Agreement shall operate as a release of the County, its officers and employees, and Santa Fe County from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. **Confidentiality.** Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

11. **Publication, Reproduction, and use of Material; Copyrights.**

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

12. Conflict of Interest. The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

13. Amendment. This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

14. Merger. This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law. The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws, rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law. The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the County.

19. Records and Financial Audit.

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

20. Indemnification. The Contractor shall defend, indemnify and hold harmless Santa Fe County from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the Santa Fe County Attorney by certified mail.

21. Invalid Term or Condition. If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

22. Enforcement of Agreement. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

23. Notices. Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Captain Mike Jaffa
 4001 Office Court Drive
 Bldg. 900, Suite 906
 Santa Fe, New Mexico 87507

To the Contractor: KOB-TV LLC.
 Sergio Herrera – Account Executive
 P.O. Box 1351
 Albuquerque, NM 87103

26. Authority. If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

27. Facsimile Signatures. The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

28. Limitation on Liability.

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, "COMPENSATION", of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

29. No Third-Party Beneficiaries.

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

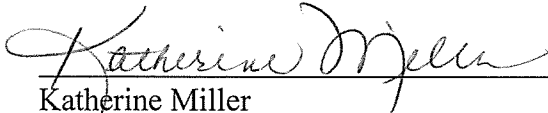
30. Survival.

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION, RECORDS AND FINANCIAL AUDIT, RELEASE, CONFIDENTIALITY, COPYRIGHT, APPLICABLE LAW, NO THIRD-PARTY BENEFICIARIES, NEW MEXICO TORT CLAIMS ACT, SURVIVAL.

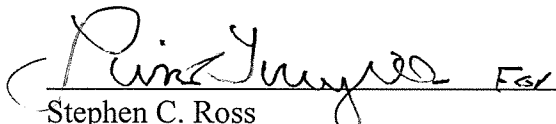
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IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date first written above.

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

Approved as to Form:


Stephen C. Ross
Santa Fe County Attorney

Finance Department Approval:


Teresa Martinez
Santa Fe County Finance Director

KOB-TV LLC

(Signature)

By: _____
(Print Name)

Its: _____
(Print Title)

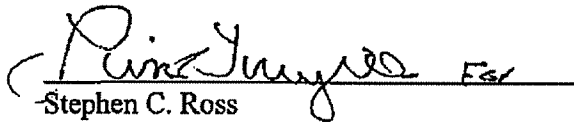
FEDERAL TAX I.D. NUMBER

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Santa Fe County Finance Director

KOB-TV LLC

(Signature)

By:

(Print Name)

Its:

(Print Title)

FEDERAL TAX I.D. NUMBER

41-1859878